

J.

DISCHELL, BARTLE, YANOFF & DOOLEY  
BY: MICHAEL YANOFF, ESQUIRE  
Identification No.: 19384  
1800 Pennbrook Parkway, Suite 200  
Lansdale, PA 19446  
215-362-2474

Attorney for Defendant  
Philip Banks

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**STEPHEN SCHUTTER,**  
**Plaintiff**

**NUMBER 2:07-CV-03823-AB**

**vs.**

**DAVID HERSKOWITZ,**  
**Defendant**

**and**

**PHILIP BANKS,**  
**Defendant**  
**Plaintiff on the Counterclaim**  
**against Schutter & Herskowitz**

**DEFENDANT, PHILIP BANKS' MOTION FOR SANCTIONS/CONTINUANCE**

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:

AND NOW, comes the Defendant, Philip Banks, by his attorney, Michael Yanoff, Esquire, and makes the following Motion for Sanctions against Frank Marcone, Esquire and for a Continuance of the Show Cause Hearing and Trial in the above matter and in support thereof, avers as follows:

1. Petitioner is Defendant in the above-captioned matter.
2. On October 23, 2008, a Show Cause Hearing was held before the Honorable David R. Strawbridge, at which time Frank Marcone, Esquire testified concerning his participation and representation of and with Defendant Philip Banks in the instant matter.

3. At that time, Mr. Marcone did not produce any documents to support any of his contentions and the undersigned, as counsel for Mr. Banks, requested that his file be made available for review and for cross-examination at the next scheduled hearing of December 1, 2008.

4. His Honor, Judge Strawbridge, at page 80-81 of the Notes of Testimony of the October 23, 2008 hearing, ordered that Mr. Marcone make the file available to the undersigned.

5. Despite frequent requests made and promises to have the file available, the file was not made available until Wednesday, November 26, 2008 at 11:30 a.m., at which time counsel for Mr. Banks received the attached letter from Mr. Stretton, Mr. Marcone's attorney, offering to have the file available either "late Wednesday afternoon, Friday or over the weekend".

6. It is relevant that this time period constitutes the Thanksgiving holiday weekend.

7. This late attempt at compliance with the Court's Order severely prejudices Mr. Banks in his ability to cross-examine Mr. Marcone and to review the file in preparation for the hearing.

8. Mr. Marcone's offer that the undersigned have the ability to root through his file cabinet to look at the file is unconscionable and contrary to his agreement before the Court.

9. In fairness to Mr. Marcone, he has filed a document with an exhibit, purporting to list times of phone calls without any further information in an effort to satisfy the request for documentation to support his contentions that he ably represented Mr. Banks in this matter.

10. Those documents, which are part of the Court record, offer no information whatsoever concerning this matter.

11. Petitioner has been severely prejudiced by Mr. Marcone's failure to respond and provide the information as directed and is unable to prepare for the hearing and trial.

WHEREFORE, Petitioner respectfully requests this Honorable Court to order that:

1. Mr. Marcone deliver the file to the undersigned's office forthwith;
2. Mr. Marcone pay attorney's fees and costs in the amount of \$1,000.00 to compensate Petitioner for the effort to obtain the records and to review same;
3. The Show Cause Hearing and the Trial in this matter be postponed so as to allow Petitioner and his counsel a reasonable time to review the records and prepare for the hearing.

Respectfully submitted,

DISCHELL, BARTLE, YANOFF & DOOLEY

BY: S/MICHAEL YANOFF, ESQUIRE

DATED: 11/26/08

SAMUEL C. STRETTON  
Attorney at Law  
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Please reply to:  
West Chester

FACSIMILE TRANSMISSION

TO: Michael Yanoff, ESO.  
FROM: SAMUEL C. STRETTON, ESQUIRE  
DATE: 11-26-08  
PAGES: 2 (INCLUDING COVER SHEET)  
FAX NO.: 215-362-6722  
COMMENTS:

If any of the above numbered pages are not received, please call  
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**SAMUEL C. STRETTON**

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November 26, 2008

Michael Yanoff, Esquire  
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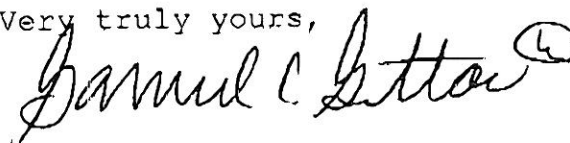
Re: Schutter v. Herskowitz & Banks

Dear Michael:

After we spoke on November 25<sup>th</sup>, I spoke in the evening to Frank Marcone. He told me that he had met with you and given you a portion of the file. He has the rest of the file in a full file cabinet. He has indicated you are welcome to come over late Wednesday or Friday or perhaps sometime this weekend. Please feel free to call him directly.

I was a little surprised at your Motion, particularly in view of the fact he has given you portions of the file. In any event, the issue is a moot issue now since you can come over and look at the file to your heart's content.

Very truly yours,

A handwritten signature in cursive script that reads "Samuel C. Stretton". To the right of the signature is a small circled number "4".

Samuel C. Stretton

SCS:mm1

cc: Frank Marcone, Esquire

VIA FACSIMILE

BY: MICHAEL YANOFF, ESQUIRE  
Identification No.: 19384  
1800 Pennbrook Parkway, Suite 200  
Lansdale, PA 19446  
215-362-2474

Attorney for Defendant,  
Philip Banks

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>PHILIP BANKS,</b>	:	<b>NUMBER 08-CV-2677</b>
<b>Plaintiff</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>STEPHEN SCHUTTER,</b>	:	
<b>Defendant</b>	:	
	:	
<b>and</b>	:	
	:	
<b>DAVID HERSKOWITZ,</b>	:	
<b>Defendant</b>	:	

**CERTIFICATE OF SERVICE**

I, **Michael Yanoff, Esquire**, hereby certify that I have served a copy of Petitioner, Philip Banks' Motion for Sanctions against Frank Marcone, Esquire and for a continuance of the Show Cause Hearing and Trial upon the person(s) listed below by faxing a copy of same on November 26, 2008:

Jay M. Herskowitz, Esquire  
181 Cypress Court  
Marlton, NJ 08053  
(856) 267-5671 (fax)

James M. Loots, Esquire  
236 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 315-3515 (fax)

Honorable David R. Strawbridge  
4006 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106-1797  
(267) 299-5065 (fax)

Samuel C. Stretton, Esquire  
301 S. High Street, P.O. Box 3231  
West Chester, PA 19381-3231  
(610) 696-2919 (fax)

Date: November 26, 2008

BY: S/MICHAEL YANOFF, ESQUIRE